HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.12591 of 2006

Date of Decision: 6.12.2006

Dr.(Mrs.) Madhurlata Ahluwalia & Ors. .....Petitoners

versus

Union of India and otheres .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA.

Present : Mr.R.P.S.Ahluwalia, Advocate for the petitioners
Mr.Divjot Singh, Advocate for respondent No.1
Mr.Sushant Maini, D.A.G., Punjab for respondent No.2
Mr.R.S.Bains, Advocate for respondent Nos.3 & 5
Mr.Ashhay Bhan, Advocate for respondent No.6
Mr.Atul Lakhanpal, Advocate for respondent No.7

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J U D G M E N T

HEMANT GUPTA, J. (Oral)

The petitioners have claimed a writ of mandamus directing the respondents to admit the petitioners to M.D. Course of Homeopathy for the academic session 2006-2007.

Petitioner No.1 obtained the diploma course in Homeopathy in the year 1968, whereas, petitioner No.2 obtained the said diploma course in the year 1971. Petitioner No.1 retired on 31.10.2005 from the Central Government Health Services, West Bengal, Calcutta, where she was working as Chief Medical Officer. Petitioner No.2 retired on 30.4.2006 after having 34 years and 7 months of teaching experience.

Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the University), invited applications for

admission to Post Graduate M.D. (Homeopathic Course) for the academic session 2006-2007 for external candidates, vide advertisement dated 28.5.2005. The eligibility conditions in the prospectus published by the University for M.D. (Homeopathic) Course, 2006, in respect of external candidates are as follows:-

> "External candidates
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> A candidate who has passed the final examination of a degree or diploma course in Homoeopathy of not less than four years' duration shall be eligible for admission as an external candidate, if such a candidate
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> a) holds a full time post not below the rank of an Asstt.Professor, or
> b) has teaching experience of not less than seven years in a recognized Homeopathic Medical College, or
> c) has ten years of professional experience.
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> Note: Compulsory Rotatory Internship is essential."

The petitioners have applied for the admission to the said course, but their candidatures have been rejected on the ground that the petitioners do not possess the Compulsory Rotatory Internship, which is essential condition for the eligibility to said course. To counter such objection, the petitioners are relying upon a communication dated 24.7.2006, issued by the Central Council of Homeopathy to the Registrar of the University, to the effect that prior to 11.5.1983 in different States, the diploma courses of different duration with different nomenclature were being conducted and that for considering the candidature of external candidates for M.D.(Homeopathic) courses for admission purposes, the University needs to check whether a candidate possess a diploma course

in Homeopathic medicine course for more than 4 years and that it is included in the Second Schedule of Homeopathy Central Council Act, 1973. It was communicated that the holders of the DHMS diploma course are eligible to be considered for admission as external students in M.D. (Homeopathic), course under the provisions of Part-VI of Homeopathy (Post Graduate Degree Course) Regulations notified by the Council. The same is the stand taken by the Central Council in the written statement filed before this Court.

However, the stand taken by the University is that the University has a right to determine the eligibility condition. Such condition of Compulsory Rotatory Internship is essential. Since, the petitioners, admittedly, are not possessed of Compulsory Rotatory Internship, the petitioners have been rightly found ineligible for admission. The fact that prior to 1983, Compulsory Rotatory Internship was not available, is not material as the admission has been denied in accordance with the determined eligibility conditions.

Learned counsel for the petitioner has vehemently argued that since prior to the year 1983, the Compulsory Rotatory Internship was not an essential condition of the curriculum, such condition could not be made applicable to the petitioners. But, I am unable to agree with such argument raised by the learned counsel for the petitioners. Compulsory Rotatory Internship was an essential eligibility condition determined by the University for the admission as an external candidate. Whether it was compulsory prior to 1983 or not is not relevant as the University thought appropriate to admit only those students to post graduate course possessing such Rotatory Internship. Therefore, it is an essential condition

that the candidate who possesses Compulsory Rotatory Internship, alone be admitted. Such condition in the prospectus is binding on the University in view of the Full Bench Judgment reported as ***1993 (2) PLR-212, Amar Singh Sihota versus State of Punjab.*** Such condition of eligibility is not contradictory to the conditions fixed by the Central Council of Homeopathy. Therefore, the University was competent to prescribe such conditions which are more stringent than fixed by the Council. I do not find any merit in the argument raised by the learned counsel for the petitioners that the eligibility condition has to be the same as fixed by the Central Council of Homeopathy.

The judgment of the Hon'ble Supreme Court of India reported as ***AIR-1998-Supreme Court-2423, Medical Council of India versus State of Karnataka and others,*** is not helpful to the petitioner. In fact, in the said case, it has been held that the Medical Council is primarily responsible for fixing the standards of medical education and to see that these standards are maintained. There is nothing in the judgment to show that the Colleges are debarred from imposing a condition which are higher or stringent than the standards fixed by the Medical Council. In case "***Jai Gokul Education Trust versus Commissioner and Secretary to Government High Commissioner etc., reported in AIR 2000-Supreme Court-1614"***, the question raised was whether there is any necessity to seek approval of the State Government for starting the Engineering College. It was held that there is no bar, but grant of approval in respect of any institute which is to be regulated by the All India Council for Technical Education. The said judgment is again not helpful to the petitioners for the reasons that the present case is not the case for starting

a technical institute, but a case where the eligibility condition has been prescribed over and above the condition prescribed by the Central Council.

Since the petitioners are not found eligible for Post Graduate Course, in terms of the conditions fixed in the prospectus, I do not find any illegality or irregularity in refusing admission to the petitioners.

Dismissed.

Copy of the order be given dasti on payment of usual fee.

(HEMANT GUPTA)
JUDGE

December 6, 2006
**mohinder*